

REMARKS

Prior to entry of this amendment, claims 1, 5, 9, 15, 17-22, 25, 28, 30, 31 and 33-36 were pending. Claims 5, 9-13, 19-22, 25, 28, 30 and 31 are canceled herein without prejudice to their presentation in a continuing application. No new claims are added. Thus, after entry of this amendment, **claims 1, 14, 15, 17, 18 and 33-36 will be pending**. Of these, claims 1, 14, 15, 17 and 18 are currently withdrawn as drawn to non-elected subject matter.

Claim 1 is amended herein to depend from claim 33, rather than claim 19, which is canceled herein. No new matter has been introduced by this amendment.

REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH

Claims 19-22 and 28 are rejected under 35 U.S.C. 112, second paragraph as allegedly failing to comply with the written description requirement. Although Applicants disagree with the Office's assertion, solely in an effort to advance prosecution of this application, claims 19-22 and 28 are canceled herein, rendering this rejection moot.

DOUBLE PATENTING

Claims 19-22, 25, 28, 30, 31 and 33-36 are rejected on the ground of non-statutory obviousness-type double patenting in view of U.S. Pre-Grant Publication No. 2004/0220111 (the '111 publication). Claims 19-22, 25, 28, 30 and 31 are canceled herein, rendering this rejection moot as it pertains to these claims. Applicants traverse this rejection as it applies to claims 33-36.

The '111 publication issued as U.S. Patent No. 7,268,118 (the '118 patent) on September 11, 2007. In order to be fully responsive to the double patenting rejection, Applicants submit arguments to this rejection based on the issued claims of the '118 patent. The claims issued in the '118 patent differ from the claims in the '111 publication, in particular the issued claims are more narrow in scope. For example, claim 1 of the '118 patent recites:

A composition comprising a polypeptide comprising amino acid sequence LKKTET (SEQ ID NO:1) or a conservative variant thereof, the composition further comprising a carrier for application to a surface of human body, wherein said carrier is for application to an external surface of said body or to an internal surface of said body, the composition comprising a gel, cream, paste, lotion, spray, suspension, dispersion, salve, hydrogel or ointment, wherein said polypeptide is gelsolin, vitamin D binding protein (DBP), profilin, cofilin,

depactin, DnaseI, villin, fragmin, severin, capping protein, beta-actinin, acumentin, TB4, TB4ala, TB9, TB10, TB11, TB12, TB13, TB14, or TB15, wherein said polypeptide is at a concentration in said carrier of at least about 0.01 ng/ml, and up to about 60 micrograms per 300 microliter.

In contrast, claims 33-36 are directed to compositions for promoting hair growth, wherein the composition comprises a polypeptide consisting of amino acids 1-26, 13-23, 7-43, 13-43, 10-28, 20-43 or 19-26 of SEQ ID NO: 1. In order to reject claims of a pending application for double patenting in view of claims in an issued patent, the Office must demonstrate the pending claims are anticipated by or an obvious variation of the patented claims (one-way test of obviousness, MPEP 804). Applicants submit the Office has failed to meet its burden in this regard. The claims of the '118 patent do not teach or suggest any compositions for promoting hair growth, nor any polypeptides consisting of the specific amino acid sequences recited in claim 33. Based on the claims of the '118 patent, it would not have been obvious to one of ordinary skill in the art to select the specific polypeptides of claims 33-36 for use in a composition to promote hair growth.

Thus, claims 33-36 of the instant application are patentably distinct from the claims of the '118 patent. Accordingly, Applicants request withdrawal of the double patenting rejection.

REJECTION UNDER 35 U.S.C. §102

Claims 19-22, 25, 28, 30 and 31 are rejected under 35 U.S.C. 102(b), second paragraph as allegedly anticipated by Kleinman et al. (WO 00/06190). Although Applicants disagree with the Office's conclusion, solely in an effort to advance prosecution of this application, claims 19-22, 25, 28, 30 and 31 are canceled herein, rendering this rejection moot.

REQUEST FOR REJOINDER

Claim 1 is amended herein to depend from claim 33. Accordingly, the pending claims remain related as product claims (33-36) and process claims (claims 1, 14, 15, 17 and 18). Applicants submit product claims 33-36 are now in condition for allowance and request rejoinder of claims 1, 14, 15, 17 and 18.

Concluding Statement

It is respectfully submitted that the present claims are in condition for allowance. Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

Respectfully submitted,

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